

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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USA BASEBALL, THE NATIONAL HIGH
SCHOOL BASEBALL COACHES ASSOCIATION,
DR. PETER BERG, JUAN HERNANDEZ, DENNIS
CANALE, MEL ZITTER, MICHAEL CRUZ, TITO
NAVARRO, JOHN TORRES, EASTON SPORTS,
INC., WILSON SPORTING GOODS CO.,
RAWLINGS SPORTING GOODS COMPANY, and
HILLERICH & BRADSBY CO.,

Plaintiffs,

**DECLARATION OF
JERALD HOROWITZ**

No. 07 CV 3605 (JGK) (DFE)

-against-

THE CITY OF NEW YORK,

Defendant.

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JERALD HOROWITZ, declares under penalty of perjury, pursuant to 28 U.S.C.

§1746, as follows:

1. I am an Assistant Corporation Counsel in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for the defendants City of the New York (“the City”). I submit this declaration in support of defendant’s motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and in opposition to plaintiffs’ motion for summary judgment and a preliminary injunction.

2. Plaintiffs filed the complaint in this matter on or about May 7, 2007. On May 15, 2007, the Court held an initial scheduling conference. On May 22, 2007, the City produced to plaintiffs the legislative record, which is comprised of approximately 3,500 pages of testimony, statements, reports and other documents. On May 29, 2007, plaintiffs filed the instant motion for summary judgment and a preliminary injunction.

3. Plaintiffs' factual submissions in this case admit that non-wood bats are "more effective," permit more "quality hits," and create more offense, because they may be swung more easily and "have a larger sweet spot" that allows players to "experience success [as] hitters without perfectly centering the ball on the bat." See Decl. of John Torres, dated May 24, 2007, ¶ 4; Decl. of Michael Cruz, dated May 29, 2007, ¶¶ 3, 5; Decl. of Peter Berg, dated May 25, 2007, ¶ 4; Decl. of Tito Navarro, dated May 25, 2007, ¶ 3; Decl. of Dennis Canale, dated May 23, 2007; Decl. of Juan Hernandez, dated May 25, 2007; see also Pl. Mem. of Law at 4-6.

4. In addition, plaintiffs market their non-wood bats that meet current standards for high school baseball play as high-performance products. For example, Plaintiff Rawlings advertises that its Liquidmetal bat "returns 29% more energy upon ball impact," has "20% more trampoline and a 30% larger sweet spot than competitive models." See Ex. D3 (attached herein).¹ Plaintiff Rawlings also claims in an advertisement that, "[u]pon ball impact, the Transmitter allows the fused Liquidmetal and carbon fiber to work together to deliver maximum velocity. . . . The result is a ball that's propelled forward with rocket force." See Ex. D3. Finally, Rawlings also claims in an advertisement that "[t]he Rush Comp [bat] features a monster barrel that crushes like a war club. . . . Both [Rush bats] are optimized to deliver a knock-out blow in the split second moment of impact. The result? The most technologically advanced weapon on the field." See Ex. D3. Plaintiff Rawling's advertisements suggest that its non-wood bats hit balls at a higher exit speed than that of wood bats.

5. Plaintiff Easton advertises that "[a]cting like a hinge[,] ConneXion provides the most efficient energy transfer from handle to barrel resulting in maximum bat head 'whip' for a quicker bat and more power through the hitting zone."). See Ex. D4. Plaintiff

¹ All exhibits to this Declaration are referred to in this document as "Ex. D ____".

Easton's advertisements suggest that its non-wood bats hit balls at a higher exit speed than that of wood bats.

6. Similarly, Plaintiff Hillerich & Bradsby Co. (the maker of the Louisville Slugger bat) advertises that the "stiff handle" of its bat "produces more barrel flex, resulting in maximum trampoline effect and, ultimately, greater performance". See Ex. D5. Plaintiff Hillerich & Bradsby's advertisements suggest that its non-wood bats hit balls at a higher exit speed than that of wood bats.

7. True and correct copies of the following documents are annexed hereto for the Court's consideration, and referenced in the accompanying declaration of Laura Popa, dated June 18, 2007, the memorandum of law, dated June 18, 2007, and defendant's Rule 56.1 response and statement, dated June 18, 2007:

- D1 New York City Council Committee Report, dated April 18, 2007 (Bates No. NYC0001582-1598).
- D2 New York City Council – Legislative Master for Int. 0341-2006 (legislative history).
- D3 Plaintiff Rawlings' press release and advertisements (8 pages).
- D4 Plaintiff Easton's press release and advertisements (4 pages).
- D5 Plaintiff Hillerich & Bradsby's (Louisville Slugger) press release and advertisements (3 pages).
- D6 Memoranda from NCAA Baseball Rules Committee to NCAA Member Institutions, dated December 4, 1998, and from Cedric W. Dempsey to NCAA Member Institutions, August 28, 1998 (6 pages).
- D7 NFHS/Referee Baseball Guide Rule Change, dated April 2002 (1 page).
- D8 Excerpts of testimony of James Easton in Baum et al. v. Hillerich & Bradsby, dated January 11, 2005, pages 80, 118-119 (Bates No. NYC0003348, 118-119).
- D9 Letter from League of Fans to NCAA and NFHS, dated May 8, 2003 (3 pages).

D10 Excerpts from Robert K. Adair, Ph.D, The Physics of Baseball, 3d ed. (Chapter entitled "Aberrant Bats: Aluminum Bats."), dated 2002 (6 pages).

D11 Alan M. Nathan, Professor of Physics, UIUC, "Some Thoughts on Wood v. Aluminum Bats," submitted to MIAA, dated January 10, 2003 (3 pages).

D12 Alan M. Nathan, "Wood vs. Aluminum Bats and the NCAA Test Protocol," dated April 15, 2007 (3 pages).

D13 Daniel A. Russell, Ph.D, "Why Aluminum Bats Can Perform Better than Wood Bats," dated October 18, 2006 (8 pages).

D14 Sherwood et al., "Characterizing the Performance of Baseball Bats Using Experimental and Finite Element Methods," (2000) (10 pages).

D15 Transcript excerpts from September 27, 2002 Council Hearing (Bates Nos. NYC0000948, 1073-1084) (testimony of Fred and Anthony Ricci).

D16 Transcript excerpts from October 23, 2006 Council Hearing (Bates Nos. NYC0000201, 310-318, 327-330, 382-384, 488-492) (testimony of Deb Patch, Frank Menechino, Ed Blankmeyer, John Baggs, and Joseph Calabrese, respectively).

D17 Transcript excerpts from March 12, 2007 Council Hearing (Bates Nos. NYC0003495, 3499-3504, 3513-3515, 3521-3527, 3541-3545) (testimony of, former Mets pitcher John Franco, coach Steve Mandl, Joe Domalewski, and Rich Guarino, Vice President of the Staten Island Baseball Alliance, respectively).

D18 Letter from Jack Curran, head baseball coach, Archbishop Molloy High School, to Council, dated March 9, 2007 (Bates Nos. NYC0003581-82).

D19 Letter from Phil Romero, head baseball coach, Christopher Columbus High School, and signed by his players, to Council Members, undated (Bates No. NYC0003588-3590).

D20 Statement from Joel Swanson, baseball scout and head baseball coach, Grove Lutheran School, and state representative for plaintiff National High School Baseball Coaches Association, undated (Bates No. NYC0002393-2398).

D21 Letter from Roy Krasik, Senior Director, Major League Operations to Christine C. Quinn, Speaker, City Council, dated January 26, 2007 (1 page), enclosing Major League Baseball Protocol for Compliance Testing of Nonwood Baseball Bats for Use in Short-Season Minor League Baseball, ASTM Standard F2219-04 Standard Test Methods for Measuring High Speed Baseball Bat Performance, and NCAA Standard for Testing Baseball Bat Performance. (22 pages).

D22 Matt Kelly and Paul Pederson, "Hardball-Hardbat: A Call for Change from Aluminum to Wooden Baseball Bats in the NCAA," The Sport Journal (submitted

Dec. 15, 2000) (4 pages); Coach Bill Thurston, Amherst College, "Aluminum Bat Performance vs. Wood Bat Performance," (Nov. 2002) (Bates Nos. NYC0002313-2322); David Albright, "Lowell Park a Virtual Baseball 'Mecca,' Says ESPN," (March 9, 2007) (3 pages); Letter from Joseph Litterio, head baseball coach, Wagner College, to Steven Matteo, Chief of Staff to New York City Council Member James Oddo, dated October 20, 2006 (Bates No. NYC0002335).

- D23 Letter from Donald Buckley, President, Nassau Suffolk Catholic High School Athletic Association to Steven Matteo, Chief of Staff to New York City Council Member James Oddo, dated November 30, 2006 (Bates No. NYC0003596); Statement, Prospect Park Baseball Association, "Wood Bat Policy," (November 2006) (1 page); Letter from Garden City Athletic Association ("GCAA") to Parents of Players in the GCAA Baseball and Softball Program, dated January 2007 (2 pages); Matthew Van Dusen, "Rec League Bars Metal Bats," The Wyckoff New Jersey Record, dated December 22, 2006 (2 pages); Notice of the Montvale, New Jersey Athletic League, (website last visited May 31, 2007) (1 page).
- D24 Statement of Joel Swanson, Associate Scout, Tampa Bay Devil Rays, and state representative for plaintiff National High School Baseball Coaches Association, "North Dakota Makes Landmark Jump to Wood," undated (2 pages); and NCAA II Great Lakes Valley Conference Regulations (printed from website on June 14, 2007) (3 pages).
- D25 Fallon et al., "Determining Baseball Bat Performance Using a Conservation Equations Model with Field Test Validation," dated August 2000 (12 pages).
- D26 NCAA Injury Surveillance System – Methods (website last visited on June 14, 2007 (2 pages).
- D27 Consumer Product Safety Commission National Electronic Injury Surveillance System CPSC Document #3002. (4 pages).
- D28 Boden et al., "Catastrophic Injuries in High School and College Baseball Players," American Journal of Sports Medicine, dated May 18, 2004. (9 pages).

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
June 18, 2007



GERALD HOROWITZ (JH8395)